

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Minnesota Teamsters Public &
Law Enforcement Employees
Union, No. 320

UNION

-and-

BMS Case No. 06-PN-0864

Wright County, Minnesota
(Non-licensed Essential Sheriff Staff Unit)

EMPLOYER

ARBITRATOR: Christine D. Ver Ploeg

DATE AND PLACE OF HEARING: May 7, 2007
Wright County Government Center
Buffalo, Minnesota

DATE OF RECEIPT OF POST-HEARING BRIEFS: May 21, 2007

DATE OF AWARD: June 6, 2007

ADVOCATES

For the Union

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For the Employer

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INTRODUCTION

This interest arbitration has been brought by Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 (hereinafter "Union") pursuant to Minnesota's Public Employment Labor Relations Act (PELRA), Minn Stat § 179A.16. The Union is the exclusive representative of the Non-licensed Essential Sheriff Staff Unit of the Wright County Sheriff's Department (hereinafter "County").

Wright County is part of Region 7W, and has a population of about 85,000 people. The County employs 638 employees. 583 employees are represented by unions in six employee groups,¹ 115 are non-union. This bargaining unit is comprised of 55 employees.

Following the parties' impasse, the Minnesota Bureau of Mediation Services certified seventeen issues for arbitration. However, the parties have more recently reached agreement on issues one, two, three, four, five, six, fourteen, sixteen, and seventeen. The remaining issues in dispute are highlighted.

1. Wages, Amount of Increase, 2006 - App. A
2. Wages, Amount of Increase, 2007 - App. A
3. Wages, Amount of Increase, 2008 - App. A
4. Insurance, Amount of Employer Increase, 2006 - Sec. 16.1
5. Insurance, Amount of Employer Increase, 2007 - Sec. 16.1
6. Insurance, Amount of Employer Increase, 2008 - Sec. 16.1
7. **Uniforms, Amount of Annual Uniform Allowance, 2006 - Sec. 23.1**
8. **Uniforms, Amount of Annual Uniform Allowance, 2007 - Sec. 23.1**
9. **Uniforms, Amount of Annual Uniform Allowance, 2008 - Sec. 23.1**
10. **Wage Classes - Request Salary Adjustment for Asst. Jail Coordinator, 2006 - App. A**
11. **Wage Classes - Request Salary Adjustment for Rec. Program Coordinator, 2006 - App. A**
12. **Wage Classes - Request Salary Adjustment for Shift Supervisor Communications, 2006 - App. A**
13. **Severance - Eligibility for Severance Benefit - Sec. 27.1**
14. Overtime - Language, Computation of Overtime - Sec. 10.1
15. **Wages - Amount of Premium Pay for Certain Shifts (Shift Differential) - New**
16. Retroactivity - Wages and Insurance, 2006 Effective Date - App. A, New
17. Wages - Amount of Wage Increases, Consequences of Legislative Reduction in Funding

¹ Other bargaining units are: the Teamsters Courthouse unit, AFSCME Human Services unit, Local 49 Highway unit, AFSCME Assistant County Attorneys unit, Teamsters Sheriff's Essential Supervisory Unit and LELS Deputies/Sergeants unit.

Arbitrators who decide such issues in interest arbitration do not apply a strict formula but instead consider the evidence as a whole. Two important bases for decision are: (1) determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table; and (2) seeking to avoid awards that significantly alter a bargaining unit's relative standing, whether internal or external, unless there are compelling reasons to do so.

Three types of evidence relevant to those two rationales are frequently presented in interest arbitration, and the parties have presented such evidence this arbitration: evidence of the employer's "ability to pay," evidence of "internal comparability" and evidence of "external comparability."

Ability to Pay

PELRA requires arbitrators in interest arbitration proceedings to consider the "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. § 179A.16, subd. 7. Thus, interest arbitrators do consider an employer's economic condition when deciding economic issues.

Union's evidence and argument

The Union offered evidence that the County is currently in good financial standing. March 2006 meeting minutes reflect that the state auditor views a reserve fund balance of 35-50% of total current expenditures as acceptable, and Wright County - at 37% - is within that range. Budget committee meeting minutes from July 18, 2006 indicate that the County's \$4.3 million dollar surplus for 2005 is more than 2.5x higher than the surplus from 2004. The minutes also indicate that one the reason why 2005 ended in good financial standing was because the County underestimated the money it would receive from the state program aid, an almost \$2 million dollar difference.

According to the state auditor's report for the year 2005 (the most current data available), the County's assets exceeded its liabilities by more than \$145 million dollars, and its total net assets had increased by more than \$18 million. More than \$13 million dollars is classified as an unreserved, undesignated fund balance. These are funds that the County can spend at its discretion and they could be used to finance the Union's positions in this arbitration.

County's evidence and argument:

In 2003 the County lost approximately \$889,420 in state aids that had previously been certified, and in 2004 the State reduced the County's state aids by a cumulative amount of \$1,599,407. Although the State subsequently replenished much of the aid that was cut, the state aid to the County has not increased over time while the County's costs continue to increase. For example, the 2006 total budget decreased by 0.6% but the County levy had to increase by 11.4% to fund increased County expenditures. Labor costs of \$2,480,000 represent a significant portion of the County budget. Similarly, while the 2007 budget increased by 5.2%, the County levy increased by 9.45% to account for County expenditures.

Although the County acknowledges that its reserve fund balance is within the “acceptable” range of 35-50%, it argues that having finally reached a balance (37%) that barely meets that standard is hardly a basis for awarding generous cost items. Moreover, looking only at the December 31 fund balance creates a false impression of affluence, for the County must rely on that balance to cover expenses during the first six months of the next fiscal year, while it awaits receipt of the next property tax payments. Finally, there are many projects at Wright County that still need funding, including a \$50 million new jail facility. The County's fund balance does not include this financial obligation.

Comment

The above evidence has been considered in determining the cost issues in this case.

Internal Comparability

Parties present evidence of “internal comparability”--evidence of the terms and conditions of employment an employer provides its various employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably in comparison.

The deference traditionally given to internal comparisons in interest arbitration reflects a fundamental concern that this process not provide rewards beyond those which the parties would have secured through the collective bargaining process. As discussed above, the role of the interest arbitrator is to determine what the parties themselves would have agreed to voluntarily. To award wages and benefits greater than these employees could have negotiated, or greater than other employee groups have negotiated, risks undermining the collective bargaining process and provoking yet more interest arbitration.

Certainly it is true that one group cannot automatically be bound to others' settlement patterns. However, the fact that a pattern is uniformly maintained for almost all of a large number

of employees is strong evidence that those terms are appropriate under existing conditions. Such evidence obliges an arbitrator to closely scrutinize the reasons for deviating from those terms for a select group of employees.

In addition, the Local Government Pay Equity Act (LGPEA) of 1984 on its face accords great importance to internal compensation relationships. The purpose of the law is to "eliminate sex-based wage disparities in public employment in this state." Equitable compensation relationships are achieved when "the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value...within the political subdivision." The Act requires public employers to strive for internal consistency in employee pay rates, and imposes severe financial penalties on those who fail to do so. In this case the County has offered credible evidence that Pay Equity considerations are currently a significant concern.

External Comparability

"External comparability" evidence--evidence which compares the employment terms and conditions of employees who perform same or similar work for different but "comparable" employers--is offered to demonstrate that the bargaining unit in interest arbitration is or is not being treated appropriately. Parties often strenuously disagree concerning the composition of the appropriate comparability group.

The Union submits that the appropriate comparison for Wright County includes the "Economic Region 7W and Contiguous Counties" comparison group of Benton, Carver, Hennepin, McLeod, Meeker, Sherburne and Stearns counties.

The County largely agrees with the Union's comparison group, with the exception of Hennepin County.

Discussion and Decision

I agree that Hennepin County is not an appropriate comparison county due to its significantly greater population, market value, tax capacity, levy, and number of housing units. Hennepin County is a member of the DCA Stanton Group Three comparison group that consists of Ramsey County, the City of Minneapolis and the City of St. Paul. Hennepin County is not included in Economic Region 7W and has never been utilized by Wright County for market comparison purposes. Arbitrator Fogelberg has also previously agreed that Hennepin County is not an appropriate comparison to Wright County. Wright County and Teamsters Local No. 320,

BMS Case No. 03-PN-902 (, 2003), p. 17, n.3.

ISSUES AT IMPASSE

Issues 7-9: Uniforms, Amount of Annual Uniform Allowance- Sec. 23.1

County Position. The County proposes to increase the annual uniform allowance by \$50 for 2006 (Total: \$450 per year).

Union position. The Union proposes to increase the uniform allowance from the current allowance amount of \$400 to \$450 in 2006, \$500 in 2007 and \$550 in 2008.

Union's evidence and argument

2007 data show that even with the Union's requested increase the Wright County civilian correctional officers and sergeants would receive a smaller uniform allowance than is provided in most comparable counties. Given the County's size and financial condition, it is unreasonable to offer one of the lowest allowances to its employees.

Internal data show the same thing. The uniforms that the civilian correctional officers and sergeants must wear are substantially similar to those worn by the patrol deputies. Patrol deputies received through arbitration, a \$50.00 increase in 2006 (to \$600.00), and a \$25.00 increase in each subsequent year of the contract.

Furthermore, no evidence was presented to suggest that the civilian corrections officers and sergeants do not currently use the full amount of their uniform allowances. The County failed to prove that there was no need for an increase.

The difference between the Union's final positions and the County's final positions is just \$3,600.00. In context it is not a large cost item for the County.

County's evidence and argument

The County notes that the Union's proposal represents a 37.5% increase over the term of the contract. The issue of uniform allowance is an economic item that must be considered in the context of total package cost.

Discussion and Decision

The Union's evidence and arguments are the more persuasive and the uniform allowance is increased accordingly.

Issues 10-12: Wage Classes - Request Salary Adjustment for Asst. Jail Coordinator, Rec. Program Coordinator, Shift Supervisor Communications, 2006 - App. A

Union position. The Union proposes to adjust the salaries for Assistant Jail Coordinator, Recreation Program Coordinator, and Shift Supervisor Communications

County Position. The County proposes no salary readjustment for the positions in question.

Union's Evidence and Argument

The Union seeks a salary increase for the Assistant Jail Program Coordinator and Recreation Program Coordinator whereby their salaries would equal the salary of the Corrections Officer position. The Union contends that these positions are filled from the pool of corrections officers, and that they are assigned program duties that respond to the same emergencies in the jail, supervise inmates, and have added program responsibilities. With respect to the Communications Shift Supervisor, the Union seeks a salary equal to that of the Corrections Sergeant.

The Union argues these salary adjustments do not represent job reclassifications, but instead would better align these underpaid positions consistent with internal jobs that have similar or fewer responsibilities.

County's Evidence and Argument

The County insists that the Union's request represents a reclassification of these three jobs that it is not obliged to negotiate or arbitrate.

Moreover, there are pay equity consequences for the two male dominated positions of Assistant Jail Coordinator and Recreation Program Coordinator. Tampering with the pay equity system by providing a further wage increase for these positions could decrease the County's currently low underpayment ratio and T-Test results.

Furthermore the County cites a history of uniform wage adjustments among bargaining units and non-union employees and argues the three employees' positions should not be treated differently than the majority of other employees.

Discussion and Decision

I agree that the Union's request represents a reclassification of these three jobs, and that job classification is a management right that the County is not obliged to negotiate or arbitrate. The County's Position Classification and Reclassification Policy provides a process that neither

the Union nor these employees have utilized. Interest arbitration is the wrong forum for this claim.

Moreover, the County demonstrated that it is reasonably concerned about its status pursuant to the Pay Equity Act, a concern that would be aggravated by adopting the Union's wage proposal. The male dominated Assistant Jail Coordinator and Recreation Program Coordinator positions are already above predicted pay. The County has not yet received a compliance notice from the Department of Employee Relations relative to its January 24, 2006 Pay Equity report, and a wage award higher than the uniform pattern for these positions will further decrease the County's currently low underpayment ratio and its T-Test results.

Issue 13: Severance - Eligibility for Severance Benefit - Sec. 27.1

County Position: The County has proposed the following revisions to the Severance Pay article in the collective bargaining agreement:

27.1 Employees in the classifications of Correctional Officer, Correctional Sergeant, Program Coordinator, Assistant Program Coordinator and Recreation Coordination whose employment is terminated (but does not quit) due to retirement, disability, permanent lay off, or other honorable conditions shall be granted severance pay in the amount of one-third (1/3) of accumulated sick leave. Upon death, the benefits are to be paid to the name survivors.

Effective the first day of the first pay period following County Board approval of the collective bargaining agreement, employees in the classification of Civilian Communications Officer and Communications Shift Supervisor shall be granted severance pay in an amount of one-third (1/3) of accumulated sick leave, not including catastrophic sick bank hours, after 20 years of employment with the County. Catastrophic sick bank hours are not included in severance pay. Severance pay is based on the employee's last rate of pay regardless of hours worked.

Union position. The Union proposes to extend the full severance benefit to all employees in the bargaining unit.

Union evidence and argument

The Union believes that it is only fair that all positions within the bargaining unit receive the same benefit. A two-tier system, such as the one the County proposes, does not address the

fundamental inequity at issue. No other bargaining units have a two- tier severance benefit. Under the County's proposal the Communication Officers and Communication Shift Supervisors would be the only employees to receive a lesser severance benefit than their fellow bargaining unit members. Fairness dictates that the Union's position be awarded.

County evidence and argument

The parties' bargaining history supports the County's position. Communication Officers and Communication Shift Supervisors have not received sick leave severance pay in the past. For at least 15 years, dating back to when the Communication Officers were originally included in the Teamsters Courthouse bargaining unit before their designation as essential employees under PELRA, these employees did not have sick leave severance. When the Communication Officers and Communication Shift Supervisors formed their own bargaining unit in 1997, represented by Teamsters, the parties voluntarily settled the initial collective bargaining agreement without including sick leave severance. When the Communication Officers and Communication Shift Supervisors were included in the Non-Licensed Essential Sheriff's unit in 2000, Teamsters voluntarily settled the 2000-2003 and 2003-2005 contracts without including sick leave severance for these two positions.

Discussion and Decision

Communications Officers and Communications Shift Supervisors have never received sick leave severance pay. The County has now proposed that they receive the same severance pay agreed to as part of the 2006-2008 contract negotiations with the Teamsters Courthouse Unit, AFSCME Human Service Unit and Local 49 Highway Unit—units that represent more than 50 % of the total County workforce. These bargaining units also have not previously participated in a severance pay program. Although the County's proposal creates a two-tier system, it represents a substantial improvement in benefits that these positions previously have not enjoyed. As such it is reasonable.

Issue 15: Wages - Amount of Premium Pay for Certain Shifts (Shift Differential) - New

Union position. The Union proposes to add a shift differential pay of \$.75 per hour for employees beginning a shift on or after 2:00 pm.

County Position. The County proposes no addition of a shift differential

Union evidence and argument

External comparables support the Union's position that employees whose shift starts at 2:00 p.m. or later should receive a shift differential of \$.75 per hour. The only comparable county that does not provide a shift differential is Meeker; every other comparable county provides a shift differential of some amount.

The mere fact that previous contracts have been settled without adding a shift differential benefit does not signify that it should *never* be added.

County's evidence and argument

The County strongly urges the Arbitrator to reject this very costly proposal for which there is no justification given the parties' arbitration precedent, bargaining history and the internal comparison data.

Discussion and Decision

Wright County Sheriff's Department employees have never received a shift differential, and the absence of such a benefit dates back to at least 1987. In 1995 LELS sought the inclusion of a shift differential provision in interest arbitration. Arbitrator Berquist denied the Union's position on the grounds that it was very costly, and that the Union had not advanced a compelling reason as to why it should be awarded in arbitration rather than negotiated at the bargaining table. Wright County and Law Enforcement Labor Services, Inc., BMS Case No. 94-PN-2072 (Berquist, 1995). Since that time, these parties have negotiated at least three collective bargaining agreements. Notwithstanding the external comparison data, each of those contracts was settled without a shift differential. I agree that the historical exclusion of such a provision in the contract places a heavy burden on the Union to demonstrate compelling reasons why it should now be added through arbitration.

The Union's proposal would cost \$126,360 over the course of a three year contract. The Union has not demonstrated a compelling reason to award this costly benefit in arbitration.

AWARD

For the above reasons, the following is awarded:

Issues 7-9: Uniforms, Amount of Annual Uniform Allowance- Sec. 23.1

The uniform allowance shall be increased from the current allowance amount of \$400 to \$450 in 2006, \$500 in 2007 and \$550 in 2008.

Issues 10-12: Wage Classes - Request Salary Adjustment for Asst. Jail Coordinator, Rec. Program Coordinator, Shift Supervisor Communications, 2006 - App. A

These proposals are not awarded

Issue 13: Severance - Eligibility for Severance Benefit - Sec. 27.1

The County's proposal is adopted

Issue 15: Wages - Amount of Premium Pay for Certain Shifts (Shift Differential) – New

This proposal is not adopted

June 6, 2007



Christine Ver Ploeg, Arbitrator